836; see 3 Williston, *Contracts* (1920) sec. 1642. The use of personalty after sale cannot be restricted even though the article is patented. *Motion Picture Patents Co. v. Universal Film Co.* (1917) 243 U. S. 502, 37 Sup. Ct. 416. But before the Clayton Act conditions might be imposed in a lease of personalty unless the lessor was illegally dominant in its particular field of trade. See *United States v. United Shoe Machinery Co.* (1918) 247 U. S. 32, 55, 38 Sup. Ct. 473, 482; see COMMENTS (1918) 27 YALE LAW JOURNAL, 1060; see also *Quincy Oil Co. v. Sylvester* (1921, Mass.) 130 N. E. 217. Under section 3 of the Act, if the lease restricts the use of competitors' wares, goods, or merchandise so as to substantially lessen competition, the restrictive condition is void. *United States v. United Shoe Machinery Co.* (1916, E. D. Mo.) 234 Fed. 127, (1920, E. D. Mo.) 264 Fed. 138. The inherent or potential viciousness of the contract or lease itself, not its present operative effect, is the test as to whether it *may* substantially lessen competition. The purpose of the Act is to prevent rather than cure. See *Standard Fashion Co. v. Magrane Houston Co.* (1918, D. Mass.) 254 Fed. 493, 499; see *United States v. Shoe Machinery Co.* (1916, E. D. Mo.) 234 Fed. 127, 150. This interpretation differs from that of restraint of trade under the Sherman Act in that no power to restrain need be shown, i. e., the size of the concern making the lease or contract has no effect. Cf. opinion of Brown, J., in *Standard Fashion Co. v. Magrane Houston Co.* (1919, C. C. A. 1st.) 259 Fed. 793, 801 (judgment must be based on evidence of effect and on a reasonable belief that there is a dangerous probability of lessening competition). It has been held that a trading stamp concern may by contract restrict subscribers to giving out stamps to customers only and enjoin third parties from using them for their own advertising; *Sperry & Hutchinson Co. v. Fenster* (1915, E. D. N. Y.) 219 Fed. 755; that a manufacturer of syrup may restrict its bottling to licensed bottlers; see *Coca-Cola Co. v. J. G. Butler & Sons* (1916, E. D. Ark.) 229 Fed. 224, 232; that a publishing company, having built up a staff of newsboys throughout the country, may restrain their handling other publications even after sale to district agents. *Pictorial Review Co. v. Curtis Publishing Co.* (1917, S. D. N. Y.) 255 Fed. 206 (the boys remained Curtis agents even though title to the magazine had passed to district agent). But a restriction not to handle other patterns in a two-year contract of sale was held void. *Standard Fashion Co. v. Magrane Houston Co. supra.* Yet leasing a gas pump on condition that only the lessor's gas be used in the pump was legal. *Canfield Oil Co. v. Fed. Trade Com'n.* (1921, C. C. A. 6th) 274 Fed. 571; *Sinclair Oil Co. v. Fed. Trade Com.* (1921, C. C. A. 7th) 276 Fed. 686. In the instant case there clearly was not a sale of the container. No restriction as to the use of a competitor's gas was imposed except that of not refilling the tank with another's gas. The dominant part of the transaction was the sale of the gas. Certainly a manufacturer need not supply a rival with containers by force of the Clayton Act unless he contracts to do so. Nor can such an arrangement substantially lessen competition. It will be of interest to see the future development of the term "substantially lessen competition." It is the teeth of section three of the Act. The tendency seems to be to give it a stricter interpretation than that applied to a reasonable restraint of trade under the Sherman Act. See NOTES (1917) 30 HARV. L. REV. 72.

SET-OFF AND COUNTERCLAIM—CHOSE IN ACTION ASSIGNED BEFORE MATURITY SUBJECT TO SET-OFF FOR CLAIM AGAINST ASSIGNOR ACQUIRED BEFORE NOTICE OF ASSIGNMENT.—The defendant made a contract to pay one Nolan, after one year, a minimum license fee for certain manufacturing privileges. Before the expiration of the year, Nolan assigned the contract to the plaintiff, who brought suit to recover the amount due. The defendant pleaded, as a set-off, a claim he held against Nolan on another contract acquired before notice of the assignment. *Held,* that the set-off should be allowed. *Nordsell v. Neilsen* (1921, Minn.) 184 N. W. 1023.

Not existing at common law, the right of set-off is purely statutory. Loyd, *The Development of Set-off* (1916) 64 U. PA. L. REV. 541. The courts are in considerable confusion, however, as to the extent to which various statutes allow the defendant to set off claims against the assignor of a chose in action in a suit by the assignee. The decisions may be conveniently grouped into three classes. (1) The New York rule is strict in requiring that both claim and set-off must be due and payable at the time of the assignment. The New York statute provides that a claim may be set-off if it existed at the time of the assignment and might have been allowed against the assignor while the contract belonged to him. C. P. A. sec. 267; *Martin v. Kunzmüller* (1867) 37 N. Y. 396; *Michigan Savings Bank v. Miller* (1906, Sup. Ct.) 96 N. Y. Supp. 568; *Harrisburg Trust Co. v. Shufeldt* (1898, C. C. A. 9th) 87 Fed. 669. Thus, under the Michigan statute, which is similarly worded, a creditor cannot set off a mature claim against the assignee of a chose in action which was not due at the time of the assignment. *Bradley v. Thompson Smith's Sons* (1894) 98 Mich. 449, 57 N. W. 576; see *Cosmopolitan Trust Co. v. Rosenbush* (1921, Mass.) 131 N. E. 858. (2) California represents the other extreme. Section 1459 of the Civil Code of California provides that the assignee of a contract takes it "subject to all the defenses existing in favor of the maker at the time of the endorsement," but section 368 of the Code provides that "the action of the assignee is without prejudice to any defense existing at the time of or before notice of the assignment." The latter section is controlling and the Supreme Court has gone so far as to hold that the claim may be set off even if not mature at the date of the notice, so long as it is due at the commencement of the action. *St. Louis Nat. Bank v. Gay* (1894) 101 Calif. 286, 35 Pac. 876; *contra, Stadler v. First Nat. Bank of Helena* (1899) 22 Mont. 190, 56 Pac. 111 (holding the first section controls and applying the New York rule). (3) Many statutes (e. g., Nev. Civil Pract. Act, sec. 46, Rev. Laws, 1912, sec. 4988) contain only the latter section of the California statute and this is interpreted, quite logically, to mean that the defendant may set off any claim which had matured before notice of the assignment. *Hibernian Banking Assoc. v. City of Chicago* (1913) 178 Ill. App. 138; *First Nat. Bank v. Nye County* (1914) 38 Nev. 123, 145 Pac. 932. The instant case is another illustration of this. As a matter of abstract justice, it seems fair to extend the doctrine even as far as the California view. The mere notice of the assignment ought not to destroy any right which the defendant has acquired against the assignor prior to the notice, even though that right is not immediately enforceable at that time. This has been recognized by courts of equity when a debtor is allowed to set off unmatured claims against the assignee of an insolvent creditor. See Clark, *Set-off in Cases of Immature Claims in Insolvency and Receivership* (1920) 34 HARV. L. REV. 178.

SPECIFIC PERFORMANCE OF CONTRACTS CONTAINING A PROVISION TO ARBITRATE.—A contract between A and B gave A the right to dig a tunnel. The plans for the tunnel were to be submitted to B for his approval. In case of disagreement an umpire was to be called, and if the parties could not agree upon an umpire, one X was to act as umpire. A submitted plans to B who refused to co-operate and threatened to obstruct construction. A thereupon submitted the plans to X, who approved of them, and then A filed a bill asking that B be enjoined from obstructing the construction. *Held,* that the agreement to arbitrate was subsidiary and incidental and that the injunction be granted, since the remedy at law was inadequate. *Hydraulic Power Co. v. Pettebone-Cataract Paper Co.* (1921, App. Div.) 191 N. Y. Supp. 12.

Equity will usually not grant specific performance of contracts for valuation or arbitration, even though the legal remedy is inadequate. Fry, *Specific Performance* (4th ed. 1903) sec. 356; 5 Pomeroy, *Equity Jurisprudence* (4th ed.